



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1996

Ms. Donna Garcia Davidson
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR96-2093

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102417.

The Office of the Governor received an open records request for certain records pertaining to complaints the Governor received about the presence of asbestos in certain Houston schools. You state that you have released to the requestor most of the requested information. You inquire, however, whether two pages of hand-written notes prepared by the governor's Special Projects Counsel are excepted from required public disclosure under sections 552.107 and 552.111 of the Government Code.¹

Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. Section 552.111 does not, however, protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 (1993) at 5. After reviewing the information at issue, we have determined that all of the information is either purely factual in nature or otherwise consists of information not excepted from public disclosure by section 552.111. Consequently, the Governor may not withhold any of the information under this exception.

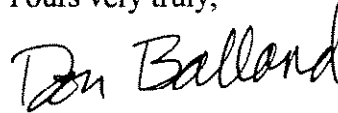
Section 552.107(1) of the Government Code excepts from required public disclosure information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional

¹We assume for purposes of this ruling that the "Special Projects Counsel" is an attorney.

Conduct." See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* However, where an attorney acts as a fact finder and not in the capacity of legal advisor, section 552.107(1) is not applicable. Open Records Decision No. 462 (1987). As noted above, the hand-written notes you have submitted to this office are purely factual in nature. You have not explained, nor is it apparent from the face of the documents, that any of the information at issue consists of either legal advice or client confidences.² The attorney-client privilege does not protect any of the information at issue. The Governor's Office therefore must release the hand-written notes in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/ch

Ref.: ID# 102417

Enclosures: Submitted documents

cc: Ms. Bennie E. Jenkins
P.O. Box 87352
Houston, Texas 77287-7352
(w/o enclosures)

²You also have not argued or otherwise demonstrated why the information at issue may be considered to be attorney-work product for purposes of section 552.111. See Open Records Decision No. 647 (1996).